

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

KEN DIVINEY, Parent and Next
Friend of Ryan Kenneth Diviney,
and BRIAN MATTHEW MCLHINNEY,

Plaintiffs,

v.

// CIVIL ACTION NO. 1:11CV149
(Judge Keeley)

AUSTIN VANTREASE, JONATHAN MAY,
DOLIN MCKEFFREY, BRANDON GROUX,
TYLER HUSFELT and ALEXANDER WOODS,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On May 3, 2012, the defendant, Austin Vantrease ("Vantrease") filed a motion for a restraining order prohibiting the plaintiff, Ken Diviney ("Diviney"), from posting certain comments on a website known as "Ryan's Rally" because he believed the posts would impact potential jurors and disrupt his right to a fair trial. (Dkt. No. 101). The Court referred this matter to United States Magistrate Judge John S. Kaull in accordance with 28 U.S.C. § 636.

On June 4, 2012, Magistrate Judge Kaull issued an Opinion and Report and Recommendation ("R&R"), in which he recommended that the motion for a restraining order be denied without prejudice. (Dkt. No. 116). Magistrate Judge Kaull found that Vantrease had failed to show he would suffer irreparable harm in the absence of a restraining order or that the postings on "Ryan's Rally" would likely infringe the defendants' right to a fair trial.

ORDER ADOPTING REPORT AND RECOMMENDATION

Although Magistrate Judge Kaul informed Vantrease that failure to object to the R&R within fourteen (14) days would result in the waiver of his appellate rights on the issue, Vantrease filed no objections.¹ The Court therefore **ADOPTS** the R&R in its entirety and **DENIES WITHOUT PREJUDICE** Vantrease's motion for a restraining order (dkt. no. 101).

It is so **ORDERED**.

The Court directs the Clerk to transmit copies to counsel of record.

DATED: June 21, 2012

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ Vantrease's failure to object to the R&R waives his appellate rights in this matter and relieves the Court of any obligation to conduct a de novo review of the issue presented. See 28 U.S.C. § 636(b)(1); United States v. Schrone, 727 F.2d 91 (4th Cir. 1984).